GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Mines and Minerals – Bauxite Mining – Cancellation of Bauxite supply agreement made between M/s APMDC Ltd and M/s ANRAK Aluminium Limited – Orders - Issued.

INDUSTRIES AND COMMERCE (M-II) DEPARTMENT

G.O.MS.No. 44 **Dated: 06-04-2016.**

Read the following:-

1) G.O.Ms.No.999, Ind & Com Dept., dt.25.10.1975.
2) MoU dt.14-02-2007 between GoAP and Government of Ras Al Khaimah.
3) G.O.Rt.No.475, Ind. & Com (M.III) Department, dt.01-08-2007
4) G.O.Rt.No.735, Ind. & Com (M.III) Department, dt. 06-11-2007.
5) G.O.Ms.No.222, Ind & Com (M.III) Department, dt.13.08.2008.
6) From the Vice Chairman & Managing Director, APMDC Ltd., proposals dt.20-10-2008.
7) G.O.Ms.No.289, Ind & Com (M.III) Department, dt.30.10.2008.
8) Agreement dt.30.10.2008 entered between M/s APMDC and M/s ANRAK.
9) From the VC&MD, M/s APMDC Ltd., Hyd Lr.No.APMDC/Baux/Jerrela/2013-14/2219, dt.02.09.2014.

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O R D E R:

In the G.O. 1st read above**,** Government of Andhra Pradesh had issued orders reserving the entire Bauxite bearing areas for exclusive exploitation by Public Sector Undertakings, as the State of Andhra Pradesh is having vast reserves of Bauxite, about 600 Million Tonnes metallurgical grade in Visakhapatnam and East Godavari Districts, accounting for 21.65% of total Bauxite reserves in India. All these areas fall under Reserved Forest as well as notified tribal areas.

2. A high level meeting chaired by the then Hon'ble Chief Minister, directed that a MoU be entered with Government of Ras - Al – Khaimah to assure supply of Bauxite from Jerrela group of deposits to their proposed Alumina plant.

3. Accordingly, in the reference 2nd read above, Govt. of Andhra Pradesh entered an Memorandum of Understanding (MoU) with Govt. of Ras Al Khaimah, UAE to supply 224 million Tons of Bauxite from Jerrela Group of Deposits in Visakhapatnam District and for establishment of Value added Alumina and Aluminium Industry dated 14.02.2007 in the State with a Capital outlay of USD 2 Billion. Thus, consequent to MoU, GoRAK (Govt of Ras-al-Khaimah) formed an Indian Company known as ANRAK Aluminum Limited on 23.02.2007 along with Penna Group of Companies. The shareholding pattern between Penna Group and Ras-Al-Khaimah in Anrak Aluminium Ltd in 2009 was 70:30 but subsequently, by 2012-13, the shareholding pattern between Penna Group and Ras-Al-Khaimah changed to 87:13

4. In the G.Os. 3rd & 4th read above, Government have constituted a six Member High Powered Committee for fixation of sale price of Bauxite and the percentage of equity that M/s Andhra Pradesh Mineral Development Corporation Limited shall demand in the proposed Value Added Industry with a direction that the Committee shall take into consideration the points mentioned therein and to submit their report within six months.

5. The High Powered Committee, constituted for fixation of sale price of Bauxite have suggested to consult M/s Price Water House Coopers Private Limited. M/s Price Water House Coopers Private Ltd., have submitted its final report on the study of bauxite price methodology and also on equity participation of M/s APMDC Ltd, and made elaborate discussions in the matter.

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6. Accordingly, the Government in the G.O. 5th read above, have issued orders accepting and approved the above recommendations of the High Powered Committee, in toto and directed M/s Andhra Pradesh Mineral Development Corporation Limited to enter into Bauxite supply agreements and take necessary further action accordingly by taking the approvals of Government wherever required from time to time, if necessary, and intimate the action taken by them at every stage to Government, scrupulously. The Bauxite Supply Agreement shall be entered into with a stipulation that it shall not be implemented till permission of the Government of India is obtained by Government of Andhra Pradesh / M/s Andhra Pradesh Mineral Development Corporation Limited under Section 2(ii) of Forest Conservation Act, 1980, and also Environment Clearances for the Bauxite Mining Project as per the directions of Hon'ble High Court of Andhra Pradesh in W.P. No.1571, dt.20-06-2006.

7. In the reference 6th read above, the Vice Chairman & Managing Director, M/s. Andhra Pradesh Mineral Development Corporation Limited has stated that after series of discussions held with M/s Price Water House Coopers Private Limited a "Draft Agreement for Supply of Bauxite Ore" has been obtained. The said Draft Agreement covers all the aspects contained in the MoU 2nd read above and the conditions stipulated in the Government orders 5th read above. In addition, it also covers operating modalities. The Vice Chairman & Managing Director, M/s Andhra Pradesh Mineral Development Corporation Limited has requested the Government for scrutiny and vetting of the said Draft Agreement.

8. Accordingly, Government in the G.O. 7th read above, have approved the said Draft Agreement for Supply of Bauxite Ore, submitted by the Vice Chairman & Managing Director, M/s. Andhra Pradesh Mineral Development Corporation Limited with a condition that this agreement shall not be implemented till the permission of the Government of India is obtained by M/s A.P. Mineral Development Corporation Limited under section 2 (ii) of Forest Conservation Act,1980 and also Environment Clearances for the Bauxite Mining project. The Vice Chairman & Managing Director, M/s. Andhra Pradesh Mineral Development Corporation Limited was permitted to enter into above agreement with M/s ANRAK Aluminium Limited.

9. In the reference 9th read above, the VC&MD, M/s APMDC Ltd has reported that according to Agreement dt. 30.10.2008 entered with M/s ANRAK, the following are un-favourable to APMDC and are to be amended for better implementation and to enhance the Revenue to the Corporation:

- To prevent APMDC/GoAP from selling Bauxite to any other party including export.
- The equity should be enhanced from 1.5% of the total equity in the value added industry to APMDC.
- To modify the 1st right for refusal to award raising contract to Alluminium Company as APMDC shall engage MDO/Raising Contractor for excavation of Buaxite.
- To eliminate the representative of purchaser at Mine site for selective mining.
- To implement the CRU formula for sale of Bauxite to earn more revenue as the earlier fixed sale price of Bauxite is very 2 meager i.e., 1.25 times of Royalty per Ton (CRU Formula:P=$20+(Pa-300)X), where P is the Price of Bauxite at Ex Mine, Pa is the price of alumina and X is a No. Between 0 and 0.4
- To modify the payment procedure i.e., the purchaser shall make advance payment for 100% value of the monthly bill.
- The termination clause has to modify based on the opinion of the Legal expert & others.

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10. The VC & MD, M/s APMDC Ltd has therefore requested the Govt to accord necessary permission for cancellation of Supply Agreement (or) to enter into modified Supply Agreement by modifying the relevant defective clauses, which are un- favourable to the Corporation and to maximize the revenue of the Corporation.

11. Further, the VC&MD, M/s APMDC in their Lr.dt.10.10.2014, has reported that the Comptroller Auditor General (CAG) of India in their report on public undertakings for the year ended March, 2013 pertaining to APMDC has observed the following:

i. These MoUs were entered into by the State Govt., on the basis of negotiations without following the process of EoI.

ii. As per the guidelines of Ministry of Mines, GoI, APMDC should hold the mining lease and carryout the mining operations as its own cost and should enter into Bauxite Supply Agreement with downstream Mineral Processing Plants ensuring that the entire profit from mining would accrue to APMDC.

iii. APMDC is having a nominal equity of 1.5% which was worked out on the basis of valuation of Mines and investment required for establishment of the Aluminum Companies.

iv. The value of all the Mines was taken at Rs.258.00 Crores only as against the value of the mines of Rs.11400.00 Crores indicated by the Govt., in September 2004, during the review meeting of Prl.Secy.

v. Clause IX of the Agreement concluded that if M/s APMDC Ltd., (i.e. seller) decides to hire machinery and other equipment required for mining and decides to award a raising contract, the 1st right of refusal shall be given to M/s ANRAK (i.e. purchaser). Thus, M/s APMDC Ltd., has lost the opportunity for selecting the raising contractors/Mine development operators through competitive Bidding process.

vi. The State Govt., informed to GoI, that entire profit from Sales of Bauxite will accrue only to APMDC. Contrary to this, sale price of Bauxite was fixed based on Royalty method and profit was limited to 1.25 times of Royalty charges for Bauxite.

vii. APMDC sought permission (April 2012) of GoAP for renegotiating the terms and conditions of the MoU/Agreement with 2nd party for revision of Bauxite pricing. APMDC informed to GoAP that additional profit of Rs.12,451 Crores based on cost of production, present sale value as per criteria adopted by GMD, could be earned by increasing Bauxite price in line with prevailing market rate.

12. After careful examination of matter in detail, the Government hereby cancel the orders issued in G.O.Ms.No.222, Industries & Commerce (M.III) Department, Dt.13.08.2008 and in G.O.Ms.No.289, Industries & Commerce (M.III) Department, Dt.30.10.2008, in which the approval to the draft Bauxite Supply agreement to M/s ANRAK Aluminium Limited, was given.

13. The Vice Chairman & Managing Director, M/s APMDC Ltd., and the Director of Mines & Geology, AP, Hyderabad shall take necessary action accordingly in the matter, immediately, under intimation to the Government.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

M. GIRIJA SHANKAR,
SECRETARY TO GOVERNMENT (M&G & FP)(FAC)

To
The Vice Chairman & Managing Director,
M/s Andhra Pradesh Mineral Development Corporation Limited, Hyderabad.

Condt...

The Director of Mines & Geology, Andhra Pradesh, Hyderabad.
M/s ANRAK ALLUMINIUM LIMITED,
Plot No.108, Road No.1, Jubilee Hills, Hyderabad – 500 034 **(BY RPAD)**
Copy to:
The Secretary to Govt. of India, Ministry of Mines, Shastri Bhavan,
New Delhi-110 001.
The General Administration (Cabinet) Department.
The Finance Department.
The Law Department.
PS to Hon'ble Chief Minister.
PS to Hon'ble Minister for Mines & Geology.
PS to Chief Secretary to Government.
PS to Secretary to Government, Industries & Commerce Department.
SF/SC (**C.NO.17619/M.II(1)/2015**)

//FORWARDED BY ORDER//

SECTION OFFICER